IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Pushpa Devi & ors. Vs. Mangilal & others

S.B.CIVIL MISC. APPEAL NO.497/1994
Against the award dated 19.04.1994 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.26/1990.

Date of Judgment : 14.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Sanjay Mathur for the appellants
Mr.Manoj Bhandari for the respondent No.3

BY THE COURT:

This is a claimants' appeal seeking enhancement over the amount of Rs.1,13,000/- awarded by the Motor Accidents Claims Tribunal, Balotra as compensation on account of accidental death of 37 years old Kheemraj, husband of appellant No.1 and son of appellant Nos.2 and 3.

Facts relevant for determination of the questions involved in this appeal are that according to the claimants, on 02.11.1989 the deceased Kheemraj and one Jasraj, residents of Jasol, were riding a motorcycle bearing registration No.RJC 5270 that was driven by non-applicant No.1 Mangilal; 42 Kms. from Balotra at Pachpadra-Barmer Road near Dudwa, the

motorcycle lost balance and took a slip on account of rash and negligent driving by the non-applicant No.1; as a result of the fall, Kheemraj and the other rider Jasraj sustained injuries; Kheemraj fell unconscious and was admitted in Hospital at Balotra and in view of serious head injury, he was referred to M.G.Hospital, Jodhpur and despite all treatments, he expired on 13.11.1989.

Claiming compensation against Mangilal, M/s Kothari Processors, Jasol, and United India Insurance Co., in their capacity respectively as driver, owner and insurer of the vehicle, for the purpose of quantification of compensation, the claimants alleged that the deceased was 35 years of age at the time of accident and was likely to earn upto the age of 70 years; that deceased was carrying on business at Bhilwara in the name of Digvijay Enterprises and at Jasol in the name of Chopra Textile Mills and was earning about Rs.7000/- per month; that the deceased was likely to earn for next 35 years and the claimants have suffered pecuniary loss of Rs.29,40,000/-. The claimants further averred that the deceased had no issues and his wife-claimant No.1 was not likely to get remarried and has suffered serious set back and mental agony for which compensation was claimed at Rs.2 lacs; and the claimant Nos.2 and 3 also claimed compensation for non-pecuniary loss at Rs.1 lac each. Another amount of

Rs.20,000/- was claimed towards treatment expenditure of the deceased Kheemraj and accordingly, the claimants made a total claim of Rs.33,60,000/-.

The insurer, non-applicant No.3 denied its liability with the averments that the deceased did not take the ride on the vehicle with the consent of the owner; that all the three persons were riding the motorcycle unauthorized and contrary to the requirements of law; that Mangilal had no valid driving licence; and that the deceased was a pillion-rider and did not answer to the description of third party. It was also submitted that the accident caused by skidding of motorcycle was an act of God to which the provisions of Motor Vehicles Act do not apply. Quantum of compensation claimed was also put to contention. In their separate reply, the non-applicant Nos.1 and 2 submitted, inter alia, that on 02.11.1989 the non-applicant No.2 (owner) lent the motorcycle for a day at the asking of Hanuman Chand alias Jasraj for going to Barmer. It was submitted that there were business relations of the owner of the vehicle with Kheemraj (deceased) through whom the owner used to purchase gray cloth and so also to sell the finished goods; and because Kheemraj was to execute the vehicle owner's orders for sale and purchase of the goods at Barmer, he was also requested to go to Barmer for the purposes of the owner of the vehicle; and because Jasraj and

Kheemraj did not know driving, the non-applicant No.2 sent their Munim Mangilal as driver of the motorcycle; and while coming back from Barmer, when the motorcycle slipped a bit on account of road-side sand Kheemraj fell down in a flurry and sustained injuries; and that the accident was not caused by rash and negligent driving of Mangilal and if there be any liability for compensation, the insurer would remain liable to satisfy the claim. On the pleadings of parties, the Tribunal framed the following issues for determination of the questions involved in the case:-

"1. आया विप्रार्थी नं.1 ने विप्रार्थी नं.2 के वाहन मोटरसाईकिल नं. 1 आर.जे.सी. 5270 से चलाकर दिनांक 2.11.89 को दुर्घटना कारित की जिससे खीमराज की मृत्यु कारित हुई ?
- प्रार्थीगण

2. आया प्रार्थीगण विप्रार्थीगण से हर्जाना प्राप्त करने के अधिकारी हैं, यदि हां तो किस कदर?
-प्रार्थीगण

3. आया मृतक पीलियन राईडर था जो थर्ड पार्टी रिस्क में नहीं आता जिससे बीमा कंपनी की कोई जिम्मेवारी नहीं बनती हैं?
-बीमा कंपनी

4. आया दुर्घटना "एक्ट ऑफ दी गोड" की तारीफ में आती हैं जिसमें मोटर व्हीकल एक्ट लागू नहीं होता ?
-बीमा कंपनी

5. आया मृतक वाहन मालिक की सहमति से नहीं बैठा, तीन सवारियां बैठकर पालिसी की शर्तों का उल्लंघन हुआ जिससे बीमा कंपनी की कोई जिम्मेवारी नहीं बनती हैं?
-बीमा कंपनी

6. आया विप्रार्थी सं. 1 के पास ड्राईविंग लाईसेन्स नहीं था तथा विप्रार्थी नं. 1 विप्रार्थी नं. 2 के नियोजक व नियंत्रण में नहीं था, जिससे क्लेम चुकाने की बीमा कंपनी की कोई जिम्मेवारी नहीं हैं?

-बीमा कंपनी

7. आया प्रार्थी नं. 2 व 3 मृतक पर आश्रित नहीं थे, जिससे अनावश्यक पक्षकार हैं ?

-बीमा कंपनी

8. दादरसी ।

In oral evidence, the claimants examined AW-1 Ashok Kumar, brother of the deceased; AW-2 Poonam Chand, father of the deceased (claimant No. 2); AW-3 Ashok Kumar a businessman at Barmer on the facts regarding the transactions carried out by the deceased on 02.11.1989; AW-4 Jasraj, other pillion-rider of the motorcycle at the time of accident; and AW-5 Ashok Kumar, employee of the owner of the vehicle M/s Kothari Processors. No evidence was led on behalf of the non-applicants. The documentary evidence produced by the claimants includes Income-tax assessment orders of the deceased, Ex. 2 and Ex. 3, relevant police investigation papers, Ex.4 to 11, Driving Licence of Mangilal Ex.12, Insurance Cover Note Ex.13, and Bills of treatment expenditure Ex.15 to 63. Another document, that is an investigator's report dated 21.01.1990, filed by the respondent-insurer has been exhibited in the statement of Ashok Kumar, AW-1 and marked as Ex.64. This report Ex.64 contains

affirmation of certain material facts in the investigation got conducted by the insurer including the business and the income of the deceased; and being their own document remains binding on the non-applicant-insurer. However, it appears that this document has not received the attention of the learned Judge of the Tribunal.

Coming to the document Exhibit 64 and other evidence later, relevant it is to notice at this juncture that on issue No.1 the learned Judge of the Tribunal has found that the motorcycle slipped on account of rash and negligent driving by the non-applicant No.1 Mangilal; but in its loosing balance it was significant that three persons were riding. On issue Nos.3, 5 and 6 concerning the liability of the insurer, the learned Judge has held that the motorcycle was comprehensively insured and though three persons were riding the motorcycle, such use was not prohibited under the policy conditions; that the policy did not provide that more than two persons will not ride on the motorcycle; and that the driver Mangilal had a valid driving licence Ex.12 and was driving the motorcycle at the instructions and in the control of owner and, therefore, the insurer remains liable. On issue No.4 a defence suggestion about the accident having occurred as an act of God has been rejected. Noteworthy it is that all such findings

have not been put to challenge by the non-applicants.

Taking up quantification of compensation and entitlement thereto in issue Nos.2 and 7, learned Judge has observed that because of three persons riding the motorcycle, the deceased was guilty of contributory negligence and his negligence has been taken at 50%. With reference to the income-tax assessment orders Ex.2 and 3, it has been noticed that the business income of the deceased from his own firm and partnership firm was of Rs.61,080/- and from his HUF sources of Rs.31,190/- per annum; and that was the income shown for the year ended on 31.03.1989, much prior to the date of accident. However, learned Judge was of opinion that claimant Nos.2 and 3 were not fully dependent on the deceased and their dependency has been taken at 50%; and then, the learned Judge has observed that a person was not likely to spend entire amount after deducting his personal expenditure on the members of the family but he would be spending only to the extent required by the family status and necessities and else the savings would be invested in further development of the business. After these observations, learned Judge has found wife of deceased entitled for Rs.25,000/- for loss of company of her husband and parents of deceased for Rs.10,000/- for loss of services of their son. Then the learned Judge has provided

Rs.6000/- towards treatment expenditure and transportation charges and thereafter has made a cursory observation that keeping in view certainties and uncertainties of income; other facts regarding age of the parents and their being dependent on other son and that there was no issue of the deceased and that wife of deceased was likely to acquire partnership in the firm in place of deceased; and likely personal expenditure of the deceased, pecuniary loss be fixed at Rs.1,75,000/-. The observations made by the learned Judge read as under:-

> "आमदनी के रूप में हुई क्षति बाबत रूपये 29,40,000/- की राशि की मांग की है। मृतक की आमदनी तथा संभावनायें व असंभावनायें एवं मृतक के माता-पिता की आयु व अन्य पुत्र पर भी आश्रित होने के तथ्य को मध्य नज़र रखते हुये तथा मृतक के कोई सन्तान नहीं है इस तथ्य को ध्यान में रखते हुये तथा भागीदारी फर्म में मृतक की पत्नि भागीदारी के रूप में हिस्सा प्राप्त करने की संभावना को देखते हुये तथा मृतक स्वयं पर होने वाले व्यय को ध्यान में रखते हुये प्रार्थीगण मृतक की आमदनी में से उन पर व्यय किये जाने वाले राशि की हुई क्षति के रूप में रूपये 1.75 लाख प्राप्त करने के अधिकारी होना सुनिश्चित किया जाता है"

Summing up the assessment aforesaid, the learned Judge has taken the loss at Rs.2,26,000/- and after deducting 50% towards contributory negligence of deceased has found the claimants entitled for compensation in the sum of Rs.1,13,000/- and then has observed that the claimants were responsible for delay in disposal of the matter and, therefore,

they would be entitled for a consolidated amount of Rs.10,000/- towards interest. Learned Judge has, thereafter taken the award amount at Rs.1,13,000/- and deducting Rs.25,000/- received by the claimants as interim compensation has ordered the remaining amount of Rs.88,000/- to be paid to the claimants in the manner that the claimant No.1 Pushpa Devi be paid Rs.78,000/- out of which Rs.70,000/- be deposited in bank and Rs.8,000/- be paid in cash and the claimant Nos.2 and 3 be allowed Rs.5,000/- each.

Learned counsel appearing for the claimant-appellants has assailed the award aforesaid with the submissions that the award is too low on its quantification of compensation and the learned Judge of the Tribunal has been in error in taking contributory negligence of the deceased at 50%. Learned counsel submitted that the deceased had not contributed to the accident and merely because three persons were riding a motorcycle, 50% contribution of the pillion-rider to the accident cannot be assumed. Learned counsel has further submitted that in view of the proved income of the deceased in the range of about Rs.90,000/- per annum, even if a reasonable deduction be made towards likelihood of some part of business income retaining itself or may be available for the dependents of the deceased, the Tribunal has seriously erred in taking a meagre lump sum of Rs.1,75,000/- towards pecuniary loss; and

the impugned award deserves to be modified for allowing just compensation to the claimant.

On the other hand, learned counsel for the insurer has opposed and submitted that when three persons were riding the motorcycle, contributory negligence of the deceased pillion-rider has rightly been taken at 50% by the Tribunal; and in view of the fact that larger share of income of the deceased was derived from the partnership business, as the wife of deceased was likely to get herself substituted as partner in the said business, the Tribunal has rightly observed that there was no loss of such income and in the overall circumstances, the award on its quantification of compensation is just and proper and calls for no interference.

Having heard learned counsel for the parties and having perused the material placed on record, this Court is clearly of opinion that the impugned award on its quantification of compensation remains too low and grossly inadequate and deserves modification with upward revision of the amount of compensation.

Having examined the considerations adopted by the learned Judge of the Tribunal, this Court is constrained to observe that all the relevant matters and aspects that ought to have gone into consideration have been ignored and the learned Judge has proceeded on baseless and irrelevant

observations while adopting a figure of Rs.1,75,000/- towards pecuniary loss.

The observations by the learned Judge, as quoted hereinbefore, show it clearly that learned Judge has not applied relevant principles before arriving at the fanciful figure of Rs.1,75,000/- towards pecuniary loss. The deceased, about 37 years in age, has been shown to be well established in business managing different business concerns including family partnership business at Jasol and his own industry at Bhilwara. Apart from the evidence led by the claimants that proves the deceased being engaged in extensive business activities and earning substantially, in the present case, a significant piece of corroborative evidence having direct bearing on the subject matter is available in the form of Investigator's report Ex.64 produced by none other than the non-applicant-insurer. In the said report, the Investigator has reported thus:

"Particulars and Deails of the Deceased family, status

The details regarding the deceased's family, income, occupation, status etc. obtained by us during the course of investigations at village Jasol and Balotra are as follows:

1.Name	:	Shri Kheev Raj s/o Poonam Chand, caste Oswal
2.Age	:	37 years
3.Address	:	Resident of Jasol town near Balotra Chopra Textile, Jasol

4.Occupation:		Cloth Business: Family partnership concern Chopra Textiles at Jasol and self owned concern known as Digvijay (Synthetics) Enterprises, Bhilwara now closed down after his death
5.Marital Status	:	Married with no issue
6.Income/ Economic status	:	Well to do family of Jasol having good landed property. In the claim petition the Monthly income is stated as Rs.7500/- per month etc. But during enquiries we obtained copy of the income Assessment report for the year 1989-90 showing his yearly income as Rs.61080/- & HUF income as Rs.31190/. The income stated in Petition is found correct.
7. Social Status:		In Jasol and Balotra they have good reputation religious minded, well to do rich family
8.Dependents:		Only wife Mrs.Pushpa Devi. His old parents in family are now looked after by his younger brother Ashok Kumar."

The fact that deceased had earned an income of Rs.61,080/- as his individual business income and the fact that in his HUF he has earned further Rs.31,190/- is amply established by the income tax assessment orders Ex.2 and Ex.3. The facts regarding his different business establishments and substantial earnings as stated in the claim petition have been got examined and found correct by the insurer too. It is undoubtedly established on record that the deceased was successfully engaged in business and had earned an income of about Rs.92,270/- in the accounting year ended on 31.03.1989, seven months prior to his demise.

Learned Judge of the Tribunal has gone on irrelevant considerations that the parents of the deceased were dependent on their other son too but has failed to consider that apart from parents, the deceased has left behind his wife at the age of 35 years who was solely dependent on him and as pointed out, she had not remarried. The loss of contribution and loss of estate could not have been ignored on such cursory observations as made by the learned Judge of the Tribunal as noticed supra. Learned Judge has further proceeded to take into consideration the fact that wife had the prospects available with her of getting substituted in the partnership firm as partner in place of the deceased. Learned Judge has failed to consider that such possibility would not be a substitute for the entire income earned and contribution made by the deceased; and undoubtedly it has been noticed by the insurer's investigator himself that the independent business of the deceased at Bhilwara was required to be closed down. Such loss to the claimants is direct and irreparable; and the learned Judge has been seriously in error in not considering substantial loss of contribution suffered by the claimants and the approach has been unrealistic while restricting the award at a mere pittance.

Having regard to the circumstances of the case where annual income of the deceased, aged 37 years was

Rs.92,270/- in his individual capacity and in his HUF and where sources of income comprised of his individual business also, this Court is of opinion that even after providing for 1/3rd for personal expenditure of the deceased and even where nothing is added towards future growth prospects, a contribution in the range of about Rs.61,514/- was available to the claimants. Noteworthy it is that deceased had no issue and, therefore, there was likelihood of larger contribution coming to the family and for the development of family estate. Even if the possibility of some part of the business income being available for the wife upon substitution in partnership is taken into consideration, this Court is of opinion that out of the likely contribution amount of Rs.61,514/-, the loss to the claimants stands minimum at Rs.50,000/- per annum and there appears to be no reason to adopt any figure lesser than that for the purpose of a reasonable multiplicand.

The deceased was 37 years of age and as per Second Schedule to Motor Vehicles Act, 1988, a multiplier of 16 could be provided, however, in the circumstances of the case, this Court considers it appropriate to apply a multiplier of 15; and even on this basis pecuniary loss itself figures at Rs.7,50,000/- minimum. A sum of Rs.15,000/- further deserves to be allowed for loss of consortium to the wife and Rs.10,000/-each to the father and mother of the deceased for loss of company and

services of their son. The amount of Rs.6,000/- allowed by the Tribunal towards treatment expenditure and transportation charges deserves to be retained and further amount of Rs.2,000/- deserves to be allowed towards funeral expenses. The loss, therefore, adds up to Rs.7,93,000/- (Rs.7,50,000 + Rs.15,000 + Rs.20,000 + Rs.6,000 + Rs.2,000).

The deceased was riding a motorcycle with two other persons and learned Judge of the Tribunal has taken this fact itself to be sufficient to assume 50% contributory negligence of the deceased. Learned Judge has failed to consider that it has not been established on record that riding of three persons on the motorcycle itself was the direct or proximate cause of accident nor it has been pointed out that the driver caused the accident because of any fault or contribution of the deceased thereto. Merely because three persons were riding the motorcycle and the motorcycle skidded it cannot be said that such riding of three persons is a fact by itself sufficient to impose contribution towards accident upon the pillion-rider victim to an extent of 50%. Moreover, in the present case the non-applicants have chosen not to lead any evidence at all and, therefore, the allegation of contributory negligence ought not to have been accepted as such. The fault, or at any rate a major part thereof, remains with the driver of the motorcycle alone. In this view of the matter, this Court is of opinion that if

at all any contributory negligence of the victim be considered, it cannot stand more than 30% and therefore, the claimants are entitled for compensation at least 70% of the loss sustained by them.

In the aforesaid view of the matter, the claimants are entitled to an amount of Rs.5,55,100/- (70% of Rs.7,93,000/-) rounded off to Rs.5,55,000/- as compensation.

The Tribunal has further seriously erred in making observations that there had been some delay on the part of the claimants and, therefore, they be awarded a lump sum of Rs.10,000/- towards interest. This Court is clearly of opinion that there cannot be any justification for denying reasonable interest to the claimants on the award amount unless the claimants are found guilty of intentionally causing delay in disposal of the claim application. After perusal of record, this Court is satisfied that the claimants have largely proceeded with reasonable dispatch towards disposal of this claim application and after framing of issues on 03.09.1992 have led and concluded their evidence on 22.05.1993 after examining five relevant witnesses. Thereafter the matter was kept pending at the request of the parties for taking up the matter in Lok Adalat and further delay was caused for the insurer having not made payment of the amount settled in Lok Adalat and so also for the Presiding Officer being not available. In the overall

circumstances of the case, this Court is clearly of opinion that learned Judge of the Tribunal has been seriously in error in depriving the claimants of reasonable interest on the award amount.

The accident in question occurred in the year 1989 and the award in question was made in the year 1994; and the then prevailing rates of interest would have entitled the claimants to interest in the range of about 9% to 12% per annum. On the other hand, in view of substantial enhancement being made herein, this Court would have considered awarding of interest at the present general prevailing rate of 6% per annum. However, in view of the fact that the claimants have otherwise been deprived of reasonable interest by the Tribunal, having regard to the overall circumstances and in the balance of equities, this Court considers it appropriate in this case to award interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of claim application. The Tribunal has allowed interest of Rs.10,000/- but has not taken the same into account in the final disbursement directions. Be that as it may, as a result of the discussion aforesaid, the claimants are entitled to be allowed the compensation amount over and above the amount awarded by the Tribunal of Rs.1,23,000/- (Rs.1,13,000/- principal + Rs.10,000/- interest) with interest @ 7.5% per annum.

The claimants are, therefore, held entitled to a further amount of Rs.4,32,000/- (Rs.5,55,000/- - Rs.1,23,000/-) with interest @ 7.5% per annum as just compensation in this case.

Consequently, this appeal succeeds and is partly allowed. The impugned award dated 19.04.1994 is modified and the claimants are awarded further compensation in the sum of Rs.4,32,000/- alongwith interest at the rate of 7.5% per annum from the date of filing of claim application. It shall be required of the insurer-respondent No.3 to deposit the amount payable under the modified award within 30 days from today with the Tribunal. Upon deposit, the Tribunal shall carry out apportionment and disbursement of the amount in the same manner and proportion as contemplated by the impugned award. In the circumstances of the case, parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

MK